

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
INMARSAT VENTURES Ltd.)	
)	
Request for Extension of Time Under Section 621(5) of the ORBIT Act)	SAT-MSC-20000808-00119
)	
INMARSAT VENTURES Plc)	
)	
Request for Additional Extension of Time Under Section 621(5) of the ORBIT Act)	SAT-MSC-20010405-00029
)	

MEMORANDUM OPINION AND ORDER

Adopted: June 25, 2001

Released: June 28, 2001

By the Commission:

I. INTRODUCTION

1. On September 28, 2000, the Commission granted the request of Inmarsat Ventures Ltd. (“Inmarsat”) for a nine-month extension of the October 1, 2000 deadline set forth in Section 621(5)(A)(ii) of the Open-Market Reorganization for the Betterment of International Telecommunications Act (the “ORBIT Act”)¹ to conduct an initial public offering (“IPO”)². Motient Services Inc. (“Motient”) has petitioned the Commission for reconsideration of that decision. Inmarsat opposes Motient’s petition.

2. Inmarsat (now d/b/a Inmarsat Ventures plc) subsequently filed a request for an additional extension of the IPO deadline from July 1 to December 31, 2001. The Commission placed this second Inmarsat request on public notice on April 12, 2001³. Lockheed Martin Global Telecommunications (LMGT), Deere & Company (Deere) the Mobile Satellite Users Association (MSUA) and the Committee to Restructure the International Satellite Organizations (CRISO) support Inmarsat’s request. Motient opposes the request.

3. We deny Motient’s petition for reconsideration of the *First Extension Order* and grant Inmarsat’s request for an additional extension. The ORBIT Act does not permit us to grant a further extension beyond December 31, 2001.

¹ ORBIT Act, Pub. L. 106-180, 114 Stat. 48(20000). *See also* Communications Satellite Act of 1962, as amended, 47 U.S.C. §§ 701 *et. seq.*

² Inmarsat Ventures Ltd., Memorandum Opinion and Order, FCC 00-356 (released October 3, 2000)(*First Extension Order*).

³ Public Notice Report No. SAT-MSC-20010405-00029, April 12, 2001.

II. BACKGROUND

4. Inmarsat was originally created as an intergovernmental satellite organization (“IGO”) to provide mobile satellite communications. It privatized on April 15, 1999 as a stock corporation in the United Kingdom.⁴ The privatization entailed the transfer of the operational assets of the IGO to a newly-created U.K. stock corporation, Inmarsat Holdings Ltd. Inmarsat Holdings Ltd. was renamed Inmarsat Ventures, Ltd., a private holding company. Inmarsat Ventures, Ltd., in turn, has an operating company subsidiary, Inmarsat Ltd., which is also a U.K. corporation. In anticipation of conducting an IPO, Inmarsat Ventures, Ltd. was converted to a public limited company, Inmarsat Ventures, plc.

5. The ORBIT Act establishes criteria for Commission review of applications to serve the U.S. market by “successor entities” of INTELSAT and Inmarsat. As an entity created as the result of the privatization of Inmarsat, Inmarsat Ventures plc., constitutes a “successor entity” under the ORBIT Act⁵. It is therefore subject to the requirement in Section 621(5)(A)(ii) that it conduct an IPO within the timeframe specified in the section, unless the Commission extends this deadline as provided in this section.⁶

6. Section 621(5)(A)(ii) of the ORBIT Act provides that:

An initial public offering of securities of any successor entity or separated entity... (ii) shall be conducted, for the successor entities of Inmarsat, on or about October 1, 2000, except that the Commission may extend this deadline in consideration of market conditions and relevant business factors relating to the timing of an initial public offering, but to no later than December 31, 2001.⁷

The purpose of this requirement is to ensure that Inmarsat becomes an independent commercial entity with a pro-competitive ownership structure.⁸ The ORBIT Act anticipates that independence will be achieved, in part, through the substantial dilution of the aggregate ownership in Inmarsat held by former Inmarsat Signatories.⁹ Thus, our consideration of Inmarsat’s request for an additional extension, as was the Commission’s grant of the previous extension request, must be based upon whether the proposed extension would serve to achieve the underlying purpose of the Act’s requirement for an IPO.

III. DISCUSSION

⁴ See Report of the Twelfth Session of the Inmarsat Assembly of Parties, Assembly/12/Report (May 8, 1998); Report of the Thirteenth (Extraordinary) Session of the Assembly of Parties, Assembly/13/Report (October 8, 1998).

⁵ See Pub. L. 106-180 § 681(a)(7)

⁶ Pub. L. 106-180 § 621(5)(A)(ii)

⁷ Pub. L. 106-180 § 621(5)(A)(ii)

⁸ See Pub. L. 106-180 § 621(2), which provides, in part: (2) INDEPENDENCE – The privatized successor entities and separated entities of INTELSAT and Inmarsat shall conduct an initial public offering in accordance with paragraph (5) to achieve such independence. Such offering shall substantially dilute the aggregate ownership of such entities by such signatories or former signatories. In determining whether a public offering attains such substantial dilution, the Commission shall take into account the purposes and intent, privatization criteria, and other provisions of this title, as well as market conditions.

⁹ See Pub. L. 106-180 § 621(2)

A. Motient Petition for Reconsideration

7. The Commission granted Inmarsat its first extension because (1) it demonstrated due diligence in preparing for the IPO; (2) its actions in preparation were reasonably related to the goal of making the company attractive to potential investors; and (3) it exercised reasonable business judgment in preparing for an IPO that will achieve the goals of the ORBIT Act as well as supporting the business needs of the company.¹⁰ The Commission said that Inmarsat should make all good faith efforts to conduct its IPO as soon as practicable based on market conditions and relevant business factors.¹¹ But it concluded that a nine-month extension will not only allow Inmarsat time to adequately ready itself for its IPO but it will provide reasonable flexibility for Inmarsat to time entry into the market at a time that will result in “substantial dilution” of its aggregate ownership as required by the ORBIT Act.¹²

8. Motient asks that we reconsider the Commission’s decision, alleging that the Commission failed to adequately address Motient’s arguments in opposition to the then proposed extension (including its allegations that Inmarsat failed to identify “business factors” or market “conditions” justifying an extension consistent with the Commission’s earlier *New Skies* decision.)¹³ Motient also contends that the Commission erred in finding that Section 601(b)(1)(D) of the ORBIT Act allows it to grant applications from entities proposing to use Inmarsat to provide domestic mobile satellite services (MSS) and other “non-core sources” prior to the date that Inmarsat conducts its IPO.¹⁴

9. Inmarsat opposes Motient’s petition for reconsideration, arguing that the Commission: correctly interpreted Section 601(b)(1)(D) of the Act, and examined the relevant business factors reported by Inmarsat in granting the first extension.¹⁵ Inmarsat also contends that there is no inconsistency with the Commission’s earlier *New Skies* decision because that decision relied on “market conditions” rather than “business factors” as a basis for an extension under the Act.¹⁶ Motient replies that the Commission must consider both market conditions and business factors in granting an extension,¹⁷ and that Section 601(b)(1)(D) applies only to applications of Inmarsat itself and not to third party applications.¹⁸

10. Basis for First Extension - The ORBIT Act gives the Commission authority to extend the deadline for Inmarsat’s IPO to no later than December 31, 2001 in consideration of market conditions and relevant business factors relating to the timing of an initial public offering.¹⁹ The Act provides no further directions as to how the Commission is to exercise its discretion under this provision. In its *First Extension Order*, the Commission considered primarily business factors in deciding to grant Inmarsat an extension. Those factors involved internal restructuring and business development to make an IPO attractive to investors. The Commission stated that, by giving Inmarsat more time to position itself so that it is more attractive to investors there is a greater likelihood of a successful IPO resulting in substantial dilution, as required by the ORBIT

¹⁰ *First Extension Order* at ¶ 8-10

¹¹ *Id.* at ¶ 11

¹² *Id.*

¹³ *Id.* at 1 and 5-7.

¹⁴ Motient petition for Reconsideration at 1 and 5. Motient also raised, and other parties filed comments, on, this issue in connection with Inmarsat’s request for an additional extension of time.

¹⁵ Inmarsat Opposition at 2 and 3-5.

¹⁶ *Id.* at 2 and 5-7.

¹⁷ Motient reply at 2.

¹⁸ *Id.* at 2.

¹⁹ Pub. L. 106-180 § 621(5)(A)(ii).

Act.²⁰ The Commission said that conducting an IPO before the necessary preparations have been completed could undermine the ORBIT Act goal of substantial dilution. On the other hand, entry of a strong independent Inmarsat – through capital infusion and shareholder dilution – will contribute to a more competitive ownership structure.²¹ Under this analysis, then existing market conditions merited less weight in our decision. In the absence of specific guidance in the Act, we believe that the Act gives the Commission discretion to place different weight on the factors it considers in granting extension if doing so would achieve the purpose of the Act. The Commission decided that Inmarsat acted reasonably, based on strong advice of its financial advisors, in deciding that internal restructuring and further development of next generation business plans was necessary for a successful IPO that would achieve “substantial dilution”.

11. Authorization of Service Pending an IPO - In its *First Extension Order*, the Commission found that the ORBIT Act specifically provides for the authorization of services pending an IPO, provided other requirements of the ORBIT Act are satisfied.²² The Commission made its finding in response to Motient’s contention that, in the event it granted an extension of the IPO deadline, the Commission should deny any application from Inmarsat or any other entity to use Inmarsat satellites until Inmarsat conducts its IPO. The Commission has recently made the same finding in licensing Intelsat LLC to operate its satellite and provide services upon the privatization of INTELSAT.²³

12. The ORBIT Act requires the Commission to determine whether the provision of “non-core” services by Inmarsat harms competition in the U.S. telecommunications market and directs the Commission to limit by conditions, deny or revoke authority to provide “non-core” service if it determines that competition is not harmed.²⁴ The Act directs the Commission to apply the privatization criteria specified by the Act in making this determination, including the requirement for an IPO.²⁵ Section 601(b)(1)(D) provides, however, the following:

“(D) RULE OF CONSTRUCTION. – Nothing in this subsection is intended to preclude the Commission from acting upon applications of INTELSAT, Inmarsat, or their successor entities prior to the latest date set out in Section 621(5)(A), including such actions as may be necessary for the United States to become the licensing jurisdiction for INTELSAT, but the Commission shall condition a grant of authority pursuant to this sub section upon compliance with sections 621 and 622.

In the *INTELSAT ORBIT Act Compliance Order*, the Commission construed this provision to mean that it may authorize non-core services prior to INTELSAT conducting an IPO under the timeframe provided in the Act, i.e., the “date set out in Section 621(5)(A)”²⁶ In granting any such authorization, the Commission said that it would assess whether INTELSAT’s privatization is

²⁰ *First Extension Order* at ¶ 10.

²¹ *Id.*

²² *First Extension Order* at ¶ 12.

²³ *Applications of Intelsat LLC for Authority to Operate and to Further Construct, Launch and Operate C-band and Ku-band Satellites that Form a Global Communications System in Geostationary Orbit*, Memorandum Opinion order and Authorization, FCC 01-183 (released May 29, 2001)(*Intelsat ORBIT Act Compliance Order*) at ¶s 23-24.

²⁴ Pub. L. 106-180 § 601(b)(I). Non-core services are defined as services other than global maritime distress and safety services or other existing maritime or aeronautical services for which there are not alternative providers with respect to Inmarsat. Pub. L. No. 106-180, § 681(a)(11).

²⁵ Pub. L. 106-180 § 601(b)(2).

²⁶ *INTELSAT ORBIT Act Compliance Order* at 24.

“consistent” with other criteria in the Act and impose such conditions as may be necessary to ensure compliance with the criteria.²⁷ The same approach applies here with respect to Inmarsat. We do not agree with Motient that Section 601(b)(1)(D) applies only to applications filed by Inmarsat itself and not to other entities seeking to use the Inmarsat system. Under Motient’s reading of the provision the Commission would be able to authorize Inmarsat’s access to the U.S. market pending an IPO but not act on applications of its U.S. customers to operate earth stations with Inmarsat satellites. The purpose of the provision is to give the Commission discretion to authorize Inmarsat services pending conduct of an IPO under favorable market conditions within the timeframe provided in the Act. The Act does not intend to penalize Inmarsat by delaying access to the U.S. market pending an IPO if Inmarsat privatization is otherwise consistent with the Act’s criteria.²⁸

13. In view of the above discussion, we deny Motient’s petition for reconsideration of the *First Extension Order*.

B. Second Extension Request

14. Inmarsat states that it has carried out the business preparations necessary to make an IPO commercially attractive to investors, including streamlining its business practices and developing innovative services.²⁹ It states that it is committed to conducting its IPO at the earliest possible date and has made all necessary preparations to do so.³⁰ Inmarsat has concluded, however, based on advice from its financial advisor, Morgan Stanley Dean Witter, that current market conditions make it impossible to conduct an IPO.³¹ It has therefore refrained from beginning “road show” presentations pending more favorable market conditions.³² Inmarsat argues that there is good cause for a further extension under these circumstances because: (1) it has diligently pursued preparations necessary to conduct an IPO; (2) an extension will serve the goals of the ORBIT Act by resulting in greater shareholder dilution under better market conditions; (3) the need for an extension is based upon its own reasonable business judgment based on advice of financial advisors; and (4) an extension will not harm the public interest or any private party.³³

15. In its opposition to a further extension, Motient contends that Inmarsat has failed to justify its request.³⁴ Motient argues that Inmarsat would not be in its current situation had it exercised reasonable diligence to conduct an IPO soon after enactment of the ORBIT Act.³⁵ It also argues that Inmarsat fails to provide specific numbers to demonstrate how an IPO conducted at the time would not result in substantial dilution of shareholder ownership as required by the Act.³⁶

16. In support of Inmarsat’s request, LMGT emphasizes that Inmarsat has taken all necessary steps toward an IPO, but the extreme volatility of world financial markets has resulted in an unfavorable environment for IPOs.³⁷ Deere states that an extension of time is warranted based on

²⁷ *Id.*

²⁸ *Id.*

²⁹ Inmarsat Ventures plc Request for Extension of Time at I, 5-6 and 11.

³⁰ *Id.* at I, 5-6, and 11-12

³¹ *Id.* at I, 6-9.

³² *Id.* at I.

³³ *Id.* at 11-14.

³⁴ Motient opposition at 4-5.

³⁵ *Id.* at 5.

³⁶ *Id.*

³⁷ LMGT comments at 2-3.

current market conditions and that it is beyond the Commission's knowledge base and scope of authority to make specific business decisions such as the timing of an IPO.³⁸ Deere believes that Inmarsat must be provided flexibility to issue an IPO at a time considered optimum by its financial advisors, and that any extension should not delay authorization of Inmarsat access to the U.S. market for non-core services.³⁹ MSUA believes that grant of the requested extension is critical to ensure the continued viability of not only Inmarsat as the "bellwether" of the MSS industry but also the MSS industry in general.⁴⁰ MSUA also argues that the Commission should not authorize Inmarsat "non-core" services in the United States pending conduct of an IPO.⁴¹ CRISO supports Inmarsat's current request but also states that we should allow Inmarsat to file for an additional extension if, by October 1, 2001, market conditions continue to be unfavorable.⁴² In addition, it asks us to direct Comsat Corporation (Comsat), as the U.S. Signatory to Inmarsat, to provide monthly reports of Inmarsat's plans to conduct an IPO.⁴³

17. Inmarsat's second extension request is not unlike that of New Skies which we granted nearly one year ago.⁴⁴ Inmarsat informs us that it has made necessary preparations for an IPO. But it seeks an additional extension based upon current market conditions which in its business judgment are not favorable to a successful IPO. There is, however, one difference with New Skies. This is Inmarsat's second request, which, if granted, would extend the deadline for an IPO to the final day which is permitted under the ORBIT Act -- December 31, 2001.

18. Based upon the information presented by Inmarsat, we conclude that a grant of the further extension requested by Inmarsat would serve to achieve the purpose of the ORBIT Act and be in the public interest. In doing so, we find that Inmarsat has demonstrated diligence in preparing for an IPO since the *First Extension Order*. Inmarsat has taken the actions to prepare for an IPO that it said it would undertake when it requested the first extension. Inmarsat has (1) prepared and continued to update necessary disclosure information for regulatory and marketing purposes and (2) restructured the company to be compliant with the corporate governance guidelines in the Combined Code in the Listing Rules of the United Kingdom Listing Authority.⁴⁵ With respect to the first area, Inmarsat has: (1) finished legal and business due diligence necessary to draft its prospectus for regulatory review and prepare necessary financial statements; (2) selected the London Stock Exchange and the New York Stock Exchange on which to list; (3) submitted the draft prospectus to the U.S. Securities and Exchange Commission (SEC) and made similar filings with the U.K. Listing Authority (UKLA); (4) worked with its financial advisors to reflect comments from the SEC and UKLA in its prospectus; and (5) consulted with its financial advisors as to preparation and timing of its "road show".⁴⁶ In restructuring the company,

³⁸ Deere comments at 4.

³⁹ *Id.* at 5.

⁴⁰ MSUA reply comments at 1-2.

⁴¹ *Id.* at 2.

⁴² CRISO comments at 1 and 5.

⁴³ *Id.* at 5. CRISO's request that we require Comsat to report Inmarsat's progress toward an IPO is misplaced. Comsat's status as the U.S. Signatory to Inmarsat existed only when Inmarsat was an intergovernmental organization and ended upon Inmarsat's privatization. Upon privatization, former Inmarsat Signatories became shareholders in the privatized company. The Commission need not obtain periodic reports from Comsat as an Inmarsat shareholder. We may obtain any information we deem necessary directly from Inmarsat. CRISO offers no basis for requiring monthly reports on Inmarsat's IPO progress and we will not impose such a requirement.

⁴⁴ *In the Matter of New Skies Satellites, N.V., Request for an Extension* under Section 623(1) of the ORBIT Act, Memorandum Opinion and Order, FCC 00-234 (June 30, 2000)(*New Skies Extension Order*).

⁴⁵ *Inmarsat Extension Request* at 5 and Attachment A, statement of Marion Parker.

⁴⁶ *Inmarsat Extension Request* at 5 and Attachment A.

Inmarsat held general shareholders' meetings in October, 2000, and then in March 2001, first to change the composition of the company's board of directors and second, to change from a private limited company to a public limited company for conduct of the IPO as required by English law.⁴⁷

19. Having completed these preparatory actions, Inmarsat decided, however, that current market conditions are unfavorable to proceeding with an IPO.⁴⁸ It therefore has delayed its "road show" prior to an IPO. Inmarsat states that its decision to delay the IPO based upon market conditions was based on its business judgement and the advice of its financial advisor. Inmarsat's financial advisor, Morgan Stanley Dean Witter, (MSDW) advised it "that market risks are currently too high to guarantee that an offering of any size would be able to proceed to completion."⁴⁹ In support, MSDW has provided its analyses to the Commission of the volatility and decline in the U.S. and international capital markets since February 1, 2001. MSDW states that the performance of technology and satellite sectors has been particularly negative and provides information showing the recent decline in major indices of stock valuation.⁵⁰ It also provides information that IPOs conducted in the United States and Europe in the past year to demonstrate a weak market for new issues. It also estimates a current worldwide "equity backlog" of \$27.2 billion, with 32% of the backlog comprised of postponed telecommunications offerings. MSDW believes that it is unlikely that market conditions will improve by the current July 1, 2001, and that additional time is necessary "to build in an adequate time cushion if the markets take longer than anticipated to recover"⁵¹. It does not believe that an IPO at this time would be successful.

20. We find that Inmarsat has acted reasonably in delaying its IPO based on the advice of its financial advisor. Motient does not appear to dispute the information presented by Inmarsat and its financial advisor as to current market conditions. Rather, Motient first argues that Inmarsat should have conducted its IPO much earlier after passage of the ORBIT Act. This argument, however, is essentially a restatement of the position Motient took in opposition to Inmarsat's first request for an extension and which we rejected in granting that extension.⁵² Nor are we persuaded by Motient's other argument that Inmarsat now should be required to demonstrate how an IPO conducted today would prevent it from meeting the "substantial dilution" requirements. Under the ORBIT Act, the Commission assesses whether "substantial dilution" has been achieved based on the size of the IPO in light of existing market conditions at the time it was concluded.⁵³ Inmarsat will have to satisfy this standard after it has conducted its IPO. For an extension of the IPO deadline, however, Inmarsat need not make an affirmative demonstration that substantial dilution cannot now be achieved, but must only show diligence in preparing for an IPO and reasonable business judgement in its timing, within the period provided by the Act. We believe that Inmarsat has made such a showing here.

⁴⁷ *Id.* In addition to U.K. listing requirements, Inmarsat states that the restructuring of its board also is in compliance with the privatization criteria of the ORBIT Act. We will consider this issue, however, in acting upon applications now pending before the Commission to use Inmarsat services in the United States. It is not necessary to address whether the restructured board complies with ORBIT Act requirements in deciding whether to grant an extension of the IPO deadline.

⁴⁸ Inmarsat Extension Request at 6-9 and Attachment A.

⁴⁹ Inmarsat Extension Request citing letter to Donald Abelson, Chief, International Bureau, from Morgan Stanley Dean Witter, dated April 4, 2001.

⁵⁰ April 4 Morgan Stanley Dean Witter letter.

⁵¹ *Id.*

⁵² *First Extension Order* at ¶

⁵³ *In the Matter of New Skies Satellites, N., V. Request for Unconditional Authority to Access the U.S. market*, Memorandum Opinion and Order, FCC 01-107, ¶ 19 (rel. March 29, 2001)(*New Skies ORBIT Act Compliance Order*).

21. Congress gave the Commission discretion to extend the ORBIT Act IPO deadline to give Inmarsat flexibility to achieve ORBIT Act goals as well as act within its own business interests. The best timing for conducting an IPO cannot be accurately forecast. More importantly, denying an additional extension could have the effect of decreasing the market value of the offering because potential investors could be positioned to offer only a low price to purchase the available shares. Such an outcome would be counter to the intended purpose of obtaining substantial dilution in the ownership of Inmarsat. Inmarsat has shown that it is prepared to conduct its IPO. We believe that a six-month extension will give it a clear opportunity to do so at a time that will achieve the purpose of the ORBIT Act. It has incentive to move forward to assure its continued access to the U.S. market. As market conditions improve, any Inmarsat failure to move forward would become self-evident.

22. We therefore find that Inmarsat has made a sufficient showing of market conditions and relevant business factors relating to the timing of an IPO so as to warrant an additional extension of six months. However, this is the last extension that we may grant to Inmarsat under the ORBIT Act. If Inmarsat fails to conduct its IPO by December 31, 2001, or if “substantial dilution” is not achieved through an IPO or other means, the ORBIT Act directs the Commission to “limit through conditions or deny” any pending application or request, and “limit or revoke previous authorizations” to use Inmarsat non-core services consistent with section 601(b)(1).⁵⁴

IV. ORDERING CLAUSES

23. Accordingly, IT IS ORDERED that the Petition for Reconsideration of Motient Services, Inc., of the *First Extension Order*, is DENIED.

24. IT IS FURTHER ORDERED, pursuant to Sections 621(2) and 621(5) of the Open-Market Reorganization for the Betterment of International Telecommunications Act, Pub. L. 106-180, 114 Stat. 48 (2000), §§ 621(2) and 621(5), that the Inmarsat Ventures, plc request for an extension of the July 1, 2001 deadline to conduct an IPO IS GRANTED, and the deadline for Inmarsat Ventures, plc to conduct its IPO consistent with the ORBIT Act is December 31, 2001.

25. IT IS FURTHER ORDERED that Inmarsat plc shall file with the Commission 30 days after conduct of its IPO a demonstration that the IPO is consistent with Section 621(2) and 621(5)(A)(11) of the ORBIT Act.

26. IT IS FURTHER ORDERED that this Memorandum Opinion and Order shall be effective upon adoption.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

⁵⁴ Pub. L. 106-180 § 601(b)(1)